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UNILEVER PATENT GROUP  
800 SYLVAN AVENUE  
AG West S. Wing  
ENGLEWOOD CLIFFS, NJ 07632-3100

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| EXAMINER |
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FOLEY, SHANON A

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1619

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ELECTRONIC

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patentgroupus@unilever.com

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7 and 9-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. (US 4,983,418) and Beauquey et al. (US 5,846,549, cited in the IDS) for reasons of record.

Claims 6, 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. and Beauquey et al. as applied to claims 1-5, 7 and 9-16 above, and further in view of Midha et al. (USPgpPub 2002/0034486) for reasons of record.

Applicant argues that the instant composition comprising at least 20% by weight of water is a critical distinction from the prior art to address the issue of how to deposit silicone in large quantities of water. Applicant asserts that such compositions are typically applied, but are washed off.

Applicant's arguments have been fully considered, but are found unpersuasive because Beauquey et al. describes water-based hair formulations comprising at least 20% water, see the working examples. Further, instant claim 1 is drawn to a composition, and does not require a silicone deposit to remain after an active step of rinsing. Instant method claims 15 and 16, drawn to treating hair by applying the instant composition and rinsing the hair after treatment, also do not require deposits to remain after rinsing.

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Applicant further asserts that the Murphy does not disclose that the instantly required components with cationic properties to aid in lowering the viscosity of the silicone gum.

Applicant's arguments and a review of Murphy have been fully considered, but are found unpersuasive. Murphy teach a hair treatment conditioning composition comprising dispersion of hectorite, a particularly preferred cationic quaternary surfactant, quaternarium-18 and a silicone elastomer. See column 9, lines 3-5, claims 1-7 and 15-21. Whether the components in the formulation of Murphy are recognized to have addition inherent properties with respect to the silicone gum is irrelevant since the requirement of their presence has been met in a single formulation, taught by Murphy et al.

Applicant is puzzled with regard to the characterization of Murphy's formulation being an "aqueous dispersion" since Murphy's composition is a non-aqueous hairspray composition where rinse-off is not addressed.

Murphy et al. disperses the clay and the silicone in claim 1. The ethanol solvent of Murphy et al. is obviously aqueous and is compatible with the clay, cationic quaternary surfactant and a silicone elastomer. The limitation step of "rinsing off" is only required in instant claims 15 and 16. Since the hair conditioner of Murphy et al. is applied to hair to maintain a temporary styling, the conditioner can be removed by a rinse with water. Further motivation to disperse the hectorite, cationic quaternary surfactant, quaternarium-18 and the silicone elastomer of Murphy et al. into the water carrier of Beauquey et al. to clean the hair, scalp or skin is found in the teachings of Beauquey et al., see column 2, lines 3-6.

Applicant further argues that there is nothing in Murphy to motivate an ordinary artisan to form the instant particles.

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Applicant's arguments have been fully considered, but are found unpersuasive. While Murphy et al. do not explicitly teach "composite particles" formed by the individual ingredients within the composition, the ingredients required by Murphy possess the requisite charges instantly recited in the claims. The hectorite clay of Murphy et al. has a net negatively charged surface. These teachings meet the requirements of instant claims 1, 4 and 5 with regard to the clay. The cationic quaternary surfactant, quaternarium-18, of Murphy et al. has a net positive charge. These teachings meet the requirements of instant claims 1, 4 and 7 with regard to the cationic quaternary surfactant required. Since the addition of the clay has a net negative charge and the cationic quaternary surfactant has a net positive charge, it is inherent that these ingredients would bind to form a composite material, as required in lines 15-16 of instant claim 1.

Applicant argues that there is no necessary use of oppositely charged clay and organic molecule in the teachings of Beauquey and there is no teaching of criticality for trapping a benefit agent in a spray-on composition.

However, these limitations are addressed by the formulation of Murphy et al. Further, both references Murphy et al. and Beauquey et al. (individually) incorporate hectorite clays, insoluble silicone agents and cationic surfactants to treat hair, see the previous citations of Murphy et al. and column 3, line 45 to column 4, line 22 and lines 59-64, as well as claims 1, 12, 22 and 26 of Beauquey et al. With regard to the argument of trapping a benefit agent, this is not a limitation required by the instant claims.

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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANON A. FOLEY whose telephone number is (571)272-0898. The examiner can normally be reached on flex, generally M-F 7AM - 3 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yvonne L. Eyler can be reached on (571) 272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shanon A. Foley/  
Primary Examiner  
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